

Summary Analysis of House Bill 2134

As enacted, H.B. 2134 (Ch. 137, 1972 Session Laws) appropriates \$50,000 for the purpose of administering an agricultural employment relations board with powers and duties aimed at assisting in the settlement of agricultural labor disputes. This measure also defines the rights of agricultural employees and their employers, and it prescribes the procedures through which a party to an agricultural labor dispute may seek assistance of the board and the courts in settling such a dispute.

Agricultural Employment Relations Board

H.B. 2134 directs the Governor to appoint a seven-member agricultural employment relations board. This board is to consist of two representatives of agriculture employers, two representatives of organized agricultural labor, and three representatives of the general public; one of the representatives of the general public will serve as chairman of the board. The Governor is also required to appoint two alternate members to the board; one representing agriculture and the other organized agricultural labor. The board members are to be appointed for five-year staggered terms, but can be removed by the Governor for neglect of duty or malfeasance in office.

The Governor is also required to appoint a general counsel for the board. The person appointed to his position is the exclusive legal representative of the board and he is authorized to appoint such assistants as may be necessary to carry out the duties of his office.

Powers and Duties of Board

H.B. 2134 provides the board with rule-making powers and with authority to "prosecute any inquiry necessary to its functions in any part of the state." Such inquiries may be conducted by the board, one or more of its members, or such agents or agencies as the board designates. A board member participating in any such inquiry could not be disqualified from participating in a subsequent decision of the board on the same case. The board also has certain investigatory powers, as set out in the bill, and is authorized to issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence.

While the board is required to have its principal office in the City of Phoenix, it may establish branch offices in other cities in the state. Powers which may be delegated to branch offices include the authority to determine appropriate units for the purpose of collective bargaining; to investigate and provide for hearings; to determine whether a question of representation exists; and to direct an election by secret ballot and certify the results. The board is authorized to review any action taken by a branch office upon the filing of a request by any interested party.

The board is also authorized by H.B. 2134 to appoint an executive secretary, attorneys, hearing officers, trial examiners, and other employees necessary to carry out its duties. The board is, however, prohibited from employing an attorney to review transcripts of hearings or to prepare drafts of opinions. An attorney appointed by the board and assigned as a legal assistant to a board member could review hearing transcripts and draft opinions for the board member to which he is assigned.

H.B. 2134 prohibits the reviewing of reports prepared by the board's trial examiners by any person other than a board member or his legal assistant. Moreover, trial examiners are prohibited from advising or consulting with the board "with respect to exceptions taken to his findings, rulings or recommendations."

Unfair Labor Practices

H.B. 2134 defines a number of unfair labor practices with regard to agricultural labor disputes. Unfair labor practices applicable to agricultural employers include the following:

1. Interfering with employees' rights to form or join labor organizations for collective bargaining purposes.
2. Dominating or interfering with the formation or administration of any agricultural employees' labor organization.
3. Discharging employees because they file charges or testify in hearings held pursuant to the provisions of this measure.
4. Refusing to bargain collectively with the representatives of an employees' labor organization.
5. Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
6. Threatening to fire an agricultural employee or reduce his wages solely because of labor activity.

Labor organizations and their agents, on the other hand, are committing unfair labor practices under H.B. 2134 if they:

1. Engage in secondary boycotts;
2. Restrain or coerce an agricultural employee or members of his family, picket his home, or cause harm to him, his family, or property, in an attempt to convince the employee to agree to assist the labor organization to achieve desired goals;
3. Refuse to engage in collective bargaining with an agricultural employer;
4. Cause or attempt to cause an agricultural employer to: a) pay for services not performed; b) alter the number of employees to be employed; or c) assign work to the employees of a particular employer;
5. Threaten, coerce, induce, or attempt to influence any secondary employer or his management employees to make a management decision not to handle or distribute the products of an agricultural employer with whom a labor dispute exists;

6. Induce or encourage consumer boycotts on the products of an agricultural employer against whom a labor dispute exists if such inducement or encouragement is carried out in an untruthful or dishonest manner; or

7. Threaten, cause, or engage in the picketing of an agricultural employer against whom a labor dispute exists for the purpose of encouraging or forcing such employer to recognize or to bargain with a particular labor organization which is not certified as the representative of the employees working for the employer.

Collective Bargaining

The bill defines collective bargaining as "the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment which directly affect the work of employees...." By specifying that only those conditions "directly" affecting the work of employees are subject to collective bargaining negotiations, the bill apparently excludes the housing conditions of the employees and their families as grievances subject to negotiation.

Collective Bargaining Representatives

H.B. 2134 prescribes the manner for selecting collective bargaining representatives of agricultural labor organizations. Such representatives are to be selected through a secret ballot election. The representatives selected are the exclusive representatives of all employees in a unit. The unit consists of groups of either all temporary or all permanent agricultural employees working at a single farm where an employer produces agricultural products.

Agricultural employees belonging to a labor organization are granted the right of presenting grievances to their employers and of having such grievances adjusted without intervention from the bargaining representatives of the organization. Such adjustments, however, must be consistent with the terms of the existing labor contract between the employer and the labor organization. Also, the bargaining representatives of the labor organization have to be afforded the opportunity to be present when such adjustments are made.

The agricultural employment relations board is authorized to decide questions of labor organizations' representatives whenever petitioned by either an employer, an employee, or a group of employees to decide such matters. The board is authorized to investigate the matter, and if it finds that such question does in fact exist, it is required to direct that an election be held to resolve the matter. The board, however, is restricted in that no election can be called in a bargaining unit where an election had been held during the preceding 12-month period.

Court Jurisdiction

Under the provisions of H.B. 2134, a superior court has jurisdiction to grant injunctive relief or temporary restraining orders upon the filing of a

suit by an aggrieved person. Such a person may also bring suit for the recovery of any damages resulting from an unlawful act committed under this bill. The measure also entitles agricultural employers to injunctive relief if such employers verify that a strike or boycott will result in the prevention of production, loss, or damage of an agricultural commodity.

Prevention of Unfair Labor Practices

The board is also authorized to receive and take action on complaints alleging unfair labor practices. The board, however, can normally take action on those complaints filed within six months of the date of the act. Upon the filing of such complaints the board, or its designated agent, is empowered to give notice to the person against whom the complaint was filed of the charges and of a hearing to be held on the matter, including the time and place such hearing is to be held.

Hearings on such complaints are required to be held, insofar as practicable, in accordance with the rules of evidence applicable to the Superior Courts of the state under the Rules of Civil Procedure. However, a complaint alleging an unfair labor practice may be amended by the person or agency holding the hearing or by the board "at any time prior to the issuance of an order" on such complaint.

Decisions of the board, or the hearing officer or agency designated by the board to hear such matters, may be appealed to the courts for review by an aggrieved party. This measure requires the courts to hear petitions filed under its provisions expeditiously and "if possible within ten days after they have been docketed."

Penalties for Violations

As provided by H.B. 2134, any person who "wilfully resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies" while such person or agency is performing any duties authorized by this measure or any person violating the provisions of this measure is guilty of a misdemeanor. Such violations are punishable by a fine of not more than \$5,000, imprisonment for not more than one year, or both. However, none of the provisions of the measure apply to activities carried on outside the state.

Scope of H.B. 2134

H.B. 2134 contains a provision which limits the applicability of its provisions to persons, labor organizations, or activities not within the jurisdiction of the National Labor Relations Act or the jurisdictional guidelines established by the National Labor Relations Board.

-- Research Division,
Arizona Legislative Council
May 17, 1972